

REMARKS

Initially, Applicant would like to express appreciation to the Examiner for the detailed Final Official Action provided, and for the allowance of claims 1 and 3-17. Upon entry of the present amendment, claim 18 will have been amended and claim 19 will have been canceled without prejudice or disclaimer. Claims 1 and 3-18 remain pending in the present application.

The Examiner has rejected claim 19 under 35 U.S.C. § 112, second paragraph. Without agreeing to the propriety of the Examiner's rejection and solely to expedite the patent application process, Applicant has canceled claim 19 without prejudice or disclaimer, and thus respectfully requests withdrawal of this rejection.

The Examiner has rejected claims 18-19 under 35 U.S.C. § 102 (b) as being anticipated by BAUDART (U.S. Patent No. 6,318,859), but has indicated that claim 18 would be allowable if amended to recite that the "upper portion changing continuously by at least one diopter" Without agreeing to the propriety of the rejection (since and solely in order to advance the prosecution of the present application, Applicant has amended independent claim 18 to substantially incorporate this feature, *i.e.*, to recite ---by at least approximately one diopter---. Further, as discussed above, Applicant has canceled claim 19. It is thus respectfully submitted that claim 18 is allowable over the art of record.

Absent a disclosure in a single reference of each and every element cited in a claim, a *prima facie* case of anticipation cannot be made under 35 U.S.C. § 102. Since the applied reference fails to disclose each and every element recited in independent claim 18, this claim is not anticipated thereby. Accordingly, the Examiner is respectfully requested to

withdraw the rejection of claim 18 under 35 U.S.C. § 102.

Thus, Applicant respectfully submits that each and every pending claim of the present application meets the requirements for patentability under 35 U.S.C. §§ 102 and 112, and respectfully requests the Examiner to indicate the allowance of each and every pending claim in the present application.

Although the status of the application is after final rejection, Applicant submits that entry of the amendment is proper under 37 C.F.R. § 1.116. In particular, Applicant believes that, contrary to the Examiner's indication, no new issues are being presented that would require an additional search. It is submitted that the Examiner has already searched and considered the claim limitations. The Examiner is respectfully requested to exercise his discretion in this regard.

COMMENTS ON STATEMENT OF REASONS FOR THE INDICATION OF
ALLOWABLE SUBJECT MATTER

In response to the Statement of Reasons for the Indication of Allowable Subject Matter, mailed by the U.S. Patent and Trademark Office on August 10, 2005, along with the above-noted Official Action, Applicant wishes to clarify the record with respect to the basis for patentability of the allowed claims in the present application. In this regard, while Applicant does not disagree with the Examiner's indications that certain identified features are not disclosed by the prior art references, as noted by the Examiner, Applicant further wishes to clarify that each of the independent claims in the present application recites a particular combination of features, and the basis for patentability of each of these claims is further based on the particular totality of the features recited therein. The dependent claims set forth additional basis for their patentability in accordance with their recited limitations as well as in accordance with the particular limitations of the respective base claims.

SUMMARY AND CONCLUSION

In view of the fact that none of the art of record, whether considered alone, or in any proper combination thereof, discloses or suggests the present invention, reconsideration of the Examiner's action and allowance of the present application are respectfully requested and are believed to be appropriate.

Applicant notes that this amendment is being made to advance prosecution of the application to allowance, and with respect to the amendment to claim 18, this amendment should not be considered as surrendering equivalents of the territory between the claim prior to the present amendment and the amended claim. Further, no acquiescence as to the propriety of the Examiner's rejection is made by the present amendment.

Should the Examiner have any questions or comments regarding this Response, or the present application, the Examiner is invited to contact the undersigned at the below-listed telephone number

Respectfully submitted,

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November 3, 2005
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